

**FILED**

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**CLERK**  
United States Bankruptcy Court  
San Jose, California

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**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

In re:

MICHAEL R. BERUBE,  
Debtor.

MICHAEL R. BERUBE,  
Plaintiff,

v.

US BANK, NATIONAL ASSOCIATION,  
AS TRUSTEE FOR JPM ALT 2007-A2,  
Defendant.

**Case No.: 09-54715-ASW-11**

**Adversary No.:**  
**(Chapter 11)**

**COMPLAINT TO DETERMINE  
VALIDITY OF LIEN**

**ADVERSARY COMPLAINT**

Comes now Debtor in Possession and Plaintiff Michael R. Berube (hereafter "Plaintiff"),  
for claims against US Bank, National Association, as Trustee for JPM ALT 2007-A2 (hereafter  
"Defendant").

COMPLAINT TO DETERMINE VALIDITY OF LIEN

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1 County, California on January 25, 2007. Said deed of trust was originally granted as part of a  
2 loan transaction between Plaintiff and Alliance Bancorp, now itself a Chapter 7 debtor in Case  
3 #07-10942-CSS in the U.S. Bankruptcy Court District of Delaware. The loan number identified  
4 on the Note is 99409. The lender/payee originally identified on the Note is Alliance Bancorp.  
5 Mortgage Electronic Registration Systems, Inc. (hereafter "MERS") is not named as payee on  
6 said note, but is named as acting solely as "nominee" for lender as the beneficiary of the security  
7 interest Deed of Trust. The trustee under said deed of trust was Alliance Title. The sequence of  
8 recorded documents and events is as follows:

- 9  
10 **1. On January 19, 2007 Debtor executed a Promissory Note in the principal amount of**  
11 **\$1,000,000 in favor of Lender Alliance Bancorp along with a Deed of Trust which**  
12 **was recorded at the Office of the Recorder of the County of Monterey as Document:**  
13 **2007006824 on January 25, 2007.**  
14
- 15 **2. On January 19, 2007 Debtor executed a Promissory Note in the principal amount of**  
16 **\$250,000 in favor of Lender Alliance Bancorp along with a Deed of Trust which was**  
17 **recorded at the Office of the Recorder of the County of Monterey as Document:**  
18 **2007006825 on January 25, 2007.**  
19
- 20 **3. On July 13, 2007 Lender Alliance Bancorp filed a Chapter 7 Bankruptcy petition**  
21 **and was assigned Case #07-10942-CSS in the U.S. Bankruptcy Court District of**  
22 **Delaware.**  
23
- 24 **4. On October 24, 2007 First American Title Insurance Company as Attorney-In-Fact**  
25 **for First American Loanstar Trustee Services as Agent for the Current Beneficiary**  
26 **executed a Notice of Default which was recorded at the Office of the Recorder of the**  
27 **County of Monterey as Document: 2007081596 on October 25, 2007. Said Notice of**  
28 **Default is not valid as it was not authorized by the Alliance Bancorp Chapter 7**

1       bankruptcy Court as would be required prior to “selling-out” any Alliance Bancorp  
2       interest in its junior lien 2<sup>nd</sup> Deed of Trust.

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4       5. On December 19, 2007 First American Loanstar Trustee Services caused a  
5       Substitution of Trustee to be recorded at the Office of the Recorder of the County of  
6       Monterey as Document: 2007093819. Said document was purportedly executed on  
7       October 22, 2007 by Chet Sconyers, Certifying Officer of Mortgage Electronic  
8       Registration Systems, Inc.

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10      6. On December 28, 2007, First American Loanstar Trustee Services caused an  
11      Assignment of the subject Deed of Trust to be recorded at the Office of the  
12      Recorder of the County of Monterey as Document: 2007095756 Said assignment  
13      appears to have been “back-dated” to reflect an effective date of 10/23/2007 yet the  
14      signature of Robert Bourne, Certifying Officer of Mortgage Electronic Registration  
15      Systems, Inc. was not notarized until 12-3-07, a date prior to the recordation of the  
16      Substitution of Trustee and more importantly *after* the Alliance Bancorp Chapter 7  
17      bankruptcy petition filed in Delaware on July 13, 2007. Mortgage Electronic  
18      Registration Systems, Inc. had no authorization from the Alliance Bancorp  
19      bankruptcy Court to transfer or otherwise divest estate property without Court  
20      approval.

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22      7. On December 31, 2007, First American Loanstar Trustee Services caused a second  
23      Assignment of the subject Deed of Trust to be recorded in the Office of the  
24      Recorder of the County of Monterey as Document: 2007096186. Said assignment  
25      appears to have been “back-dated” to reflect an effective date of 10/23/2007 yet the  
26      signature of Chet Sconyers, Certifying Officer of Mortgage Electronic Registration  
27      Systems, Inc. was not notarized until DEC 20 2007, a date well after the Alliance  
28      Bancorp Chapter 7 bankruptcy petition filed July 13, 2007. Mortgage Electronic

1       **Registration Systems, Inc. had no authorization from the Alliance Bancorp**  
2       **bankruptcy Court to transfer or otherwise divest estate property without first**  
3       **obtaining that Court's approval.**

4       **8. On 4/22/2008, First American Title Insurance Company caused a Notice of**  
5       **Trustee's Sale to be recorded in the Office of the Recorder of the County of**  
6       **Monterey as Document: 2008025034. Said notice is no more valid than the**  
7       **underlying Notice of Default for lack of notice on, or any approval from the**  
8       **Alliance Bancorp Chapter 7 bankruptcy Court.**

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10       **9. On 11/17/2008, a Substitution of Trustee prepared by GMAC Mortgage, LLC was**  
11       **recorded in the Office of the Recorder of the County of Monterey as Document:**  
12       **2008074891. Said document was executed by Vickie Day, Assistant Secretary of**  
13       **Mortgage Electronic Registration Systems, Inc., the purported "present Beneficiary**  
14       **under the Deed of Trust" MERS is not a true beneficiary and acts "solely as**  
15       **nominee". MERS loans no money and collects no payments, nor does it hold any**  
16       **promissory notes.**

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18       **10. On 11/17/2008, caused a Full Reconveyance to be recorded in the Office of the**  
19       **Recorder of the County of Monterey as Document: 2008074892. Said document, if**  
20       **valid, would have the effect of extinguishing any interest that might be held by held**  
21       **by the Alliance Bancorp Chapter 7 bankruptcy estate. No record assignment to**  
22       **GMAC Mortgage, LLC, or to any other party exists within those records**  
23       **maintained by the Office of the Recorder of the County of Monterey. Except for**  
24       **this "wild" reconveyance recorded at the request of a total stranger to the**  
25       **transaction, the Alliance Bancorp Chapter 7 bankruptcy estate would continue to**  
26       **hold an interest in the junior lien 2<sup>nd</sup> Deed of Trust.**

1       **11. On 4/06/2009, First American Title Insurance Company and First American**

2       **Loanstar Trustee Services caused a Notice of Trustee's Sale to be recorded at the**  
3       **Office of the Recorder of the County of Monterey as Document: 2009020304.**

4       **Again, said notice is no more valid than the underlying Notice of Default for lack of**  
5       **notice on, or any approval from the Alliance Bancorp Chapter 7 bankruptcy Court.**

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7       Plaintiff alleges that Defendant is not in any valid chain of title with regard to said lien  
8       and holds no valid lien as to the Property. Defendant US Bank is not a party to any underlying  
9       promissory note per any recorded document or allonge purporting to assign an interest.  
10      Defendant can not be a holder in due course. The applicable Pooling and Servicing Agreement  
11      (hereafter "PSA") relative to the securitized trust for which Defendant purports to be the trustee  
12      sets forth a particular method and sequence for funding the trust and those requirements have not  
13      been followed in a way that could support the purported lien on the Property as being property of  
14      that trust estate. Defendant can not be a holder in due course of the underlying promissory note  
15      because the necessary endorsements required by the applicable PSA were not made.

16      At the time of the purported assignments from originating lender Alliance Bancorp, said  
17      originating lender was itself a Chapter 7 debtor in the Delaware case referenced above. Plaintiff  
18      is informed and believes that at all times of said purported assignments, no authorization or  
19      permission was received from the Alliance Bancorp bankruptcy Court so as to permit the  
20      divesting of its estate property and that any such assignment is void. There is no underlying  
21      obligation in favor of Defendant which can support the subject lien. Defendant US Bank does  
22      not appear in any of the assignment documents or allonge relative to the Note underlying the  
23      subject lien.

24      The securitized trust under which Defendant purports to hold title or act for its  
25      beneficiaries was not timely funded with a note and/or security interest by the explicit terms of  
26      the trust (i.e. before the Cut-Off Date for trust funding) and the trust for which Defendant  
27      purports to act as trustee has no interest in the subject Property.

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**CLAIM I – DECLARATORY RELIEF**

An actual controversy has arisen and now exists between Plaintiff and Defendant regarding their respective rights and duties, in that Plaintiff contends that Defendant did not and does not have the right to pursue a claim under the Note and Deed of Trust as to the Property because Defendant's security interest in the Property is void.

The Defendant's purported lien has no validity because Defendant has no right, title or interest in the subject promissory note and/or deed of trust, nor does Defendant have agency authority from one with right, title or interest in said Deed of Trust.

Plaintiff respectfully requests the Court determine the rights as between Plaintiff and Defendant and declare that the Defendant's lien has no validity.


**CLAIM II – QUIET TITLE**

Plaintiff realleges and incorporates by reference the allegations contained in the previous paragraphs of this complaint.

The Defendant's purported lien has no validity because the Defendant has no right, title or interest in the subject promissory note and/or deed of trust, nor does Defendant have agency authority from on with right, title or interest in said Deed of Trust.

Wherefore, Plaintiff requests the Court quiet title to the Property as to the Defendant named herein.

February 16, 2011

  
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Michael R. Berube, Debtor